

Under the Cigarette Tax Act, it is unlawful for any person to sell or distribute in this State any cigarettes the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording. See 86 Ill. Adm. Code 440.50. (This is a GIL.)

November 8, 2000

Dear Xxxxx:

This letter is in response to your letter dated October 6, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's Web site at www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

I represent two Illinois cigarette distributors. This letter is to request an **immediate** ruling on the proposed sale of certain cigarettes, in accordance with Ill. Dept. of Rev. Regulations, Title 2, Part 1200, Section 1200.110(b).

My clients, CLIENT1 and CLIENT2 wish to purchase, stamp and sell to retailers throughout Illinois certain cigarettes that do **not** bear any mark or statement indicating that the cigarettes are not intended to be sold, distributed or used in the United States. A sample package of the cigarettes is enclosed.

As you can see, the enclosed box bears one of the four approved Surgeon General's warnings. Further inspection also reveals a sticker affixed to the top/side of the box that says 'made in Switzerland'. Such stickers, of course, are common on any imported cigarette (like 'Dunhill') that is perfectly legal to sell.

There is no written contract that is pertinent to this matter. However, both clients have the opportunity to contract to buy these cigarettes and make profit from their re-sale. By impeding my clients' right to sell these cigarettes, even if only for as long as it takes to obtain the ruling we are requesting, the state of Illinois (and quite possibly the manufacturers as well) is/are interfering with my clients' **right and ability** to contract.

My clients and I represent that we are not aware of any audit or litigation that is pending with the Department of Revenue. We have not submitted any similar issue to the Department and/or withdrawn it prior to a ruling. Further, to the best of our knowledge, the Department has not ruled on the **same** issue. However, on November 29, 1999, the

Department issued private letter ruling 99-0358 wherein it approved the sale of cigarettes in Illinois that, like these, were Marlboro brand, made in Switzerland, that had cleared U.S. Customs. (A copy of that report is enclosed for your convenience.) The distinguishing difference between the request of November, 1999 that this one is that the enclosed pack is **not** marked in a way that is expressly precluded by amendments to state law which took effect as of June 13, 2000 – such as section 440.50(k) of the Illinois Cigarette Tax Act.

We believe that the only authority at issue is Section 440.50(k) of the Illinois Cigarette Tax Act. This section precludes the stamping and imprinting of cigarettes that are defined in any one of the section's six subparts.

In this case, the subject cigarettes clearly fall outside of four of the section's six subparts, leaving only subparts (4) and (5) at issue. Applying either of those subparts, however, is impossible. Both are overly broad, vague and ambiguous. In particular, subpart (4) requires cigarette distributors and retailers to speculate as to the thoughts and intentions of cigarette manufacturers by precluding a person from 'affixing the stamp or imprint' to a package of cigarettes that the person 'knows ***or has reason to know*** the manufacturer did not intend to be sold, distributed, or used in the United States'. Similarly, subpart (5) requires the distributor and retailer to know whether a list of ingredients has been submitted to the Secretary of the U.S. Department of Health and Human Services.

It is our position that the inherent ambiguity of section 440.50(k) renders it inapplicable to the sale of the subject cigarettes, and therefore, both my clients should be allowed to purchase, stamp and resell them in the state of Illinois without fear of audit, consequence or reprisal. This is the specific position for which we are requesting a binding letter ruling.

In closing, we have asked for a letter ruling on an expedited basis for good reason. First, the statute's current form is impeding the flow of commerce and my clients' right and ability to earn a living. Waiting for a response to this issue prolongs this reality. As with any business, time lost is money lost, and money lost means money gained by a competitor, placing my clients at a competitive disadvantage to their competitors. This disadvantage cannot be underestimated. ***My clients both fear that they may be put out of business by the delay in getting the requested ruling*** – all because they are unwilling to engage in the sale of these cigarettes, while their competitors have not hesitated, despite the fact that their conduct may be illegal.

If you believe upon receipt of this letter that an answer cannot be given immediately, please issue a temporary letter allowing the sale of this product while you contemplate your decision. Meanwhile, the undersigned anxiously await your response.

In response to your request for a Private Letter Ruling, the Department asked for further information to support the requirements necessary for the issuance of a Private Letter Ruling. Specifically, the Department requested information that demonstrated that your clients are in compliance with the provisions of subparagraphs (B), (C), and (D) of paragraph (1) of subsection (a) of Section 3-10 of the Cigarette Tax Act. You subsequently indicated that only a General Information Letter was warranted.

Public Act 91-0810, effective June 13, 2000, which among other Acts, amends the Cigarette Tax Act ("Act"), 35 ILCS 130/3-10, provides, in part, the following:

"(a) Prohibitions. It is unlawful for any person:

(1) to sell or distribute in this State; to acquire, hold, own, possess, or transport, for sale or distribution in this State; or to import, or cause to be imported into this State for sale or distribution in this State:

(A) any cigarettes the package of which:

(i) bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or

(ii) does not comply with:

(aa) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; and

(bb) all federal trademark and copyright laws;

(B) any cigarettes imported into the United States in violation of 26 U.S.C. 5754 or any other federal law, or implementing federal regulations;

(C) any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States; or

(D) any cigarettes for which there has not been submitted to the Secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of the cigarettes required by the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a;

(2) to alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:

(A) any statement, label, stamp, sticker, or notice described in subdivision (a)(1)(A)(i) of this Section;

(B) any health warning that is not specified in, or does not conform with the requirements of, the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; or

(3) to affix any stamp required pursuant to this Act to the package of any cigarettes described in subdivision (a)(1) of this Section or altered in violation of subdivision (a)(2)."

Similar provisions were also added to the Cigarette Use Tax Act. 35 ILCS 135/3-10. The Department's Emergency Regulations implementing these provisions are set forth at 86 Ill. Adm. Code 440.50 and 86 Ill. Adm. Code 450.10, enclosed. Packages of cigarettes that comply with the above statutory provisions may be legally sold in the State of Illinois.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.